

16-90111-jm  
December 22, 2016  
Chief Judge

**JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT**

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In re  
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 16-90111-jm

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ROBERT A. KATZMANN, *Chief Judge*:

On November 14 and 17, 2016, the Complainant filed a complaint and a supplemental complaint with the Clerk's Office of the United States Court of Appeals for the Second Circuit pursuant to the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364 (the "Act"), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings, 249 F.R.D. 662 (U.S. Jud. Conf. 2008) (the "Rules"), charging a district judge of this Circuit (the "Judge") with misconduct.

**BACKGROUND**

The Complainant is the defendant in a criminal case in which he is charged with witness retaliation and cyberstalking. The case is assigned to the Judge. Following a psychological evaluation, the Judge ordered the Complainant committed for treatment. In October 2016, the Judge authorized involuntary

administration of antipsychotic medication. That order also denied the Complainant's pro se motion to dismiss on speedy trial grounds without prejudice to renewal by the Complainant's counsel. The Complainant's pro se appeal of the denial of the motion to dismiss is pending in the court of appeals.

The misconduct complaint alleges that the Judge: [i] delayed ruling on the Complainant's motion to dismiss and improperly denied the motion; and [ii] erred in ordering the Complainant forcibly medicated. The misconduct complaint further alleges that the Complainant is not mentally ill and that the prosecution is trying to force a plea or avoid a public trial.

## **DISCUSSION**

The complaint is dismissed.

An allegation that a judge, in reaching a decision, neglected to consider fully all arguments presented, failed to comprehend the meaning or import of certain statutes or cases, or disregarded certain key facts or evidence is merely challenging the correctness of the judge's decision. In other words, what such allegations contend is that the judge got it wrong, not that the judge engaged in judicial misconduct.

The allegations in the complaint relating to the Judge, including the

allegation of delay, fall entirely into this category. The complaint seeks merely to challenge the timing and correctness of the Judge's rulings in the criminal proceeding. Accordingly, the complaint is dismissed as "directly related to the merits of a decision or procedural ruling." 28 U.S.C. § 352(b)(1)(A)(ii); Rule 3(h)(3)(A) ("An allegation that calls into question the correctness of a judge's ruling . . . , without more, is merits-related."); Rule 3 cmt. ("[A] complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge—in other words, assigning a low priority to deciding the particular case."). Purely merits-related allegations are excluded from the Act to "preserve[] the independence of judges in the exercise of judicial power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge's ruling." Rule 3 cmt. Such challenges can be pursued, to the extent the law allows, only through normal appellate procedures.

Any allegation against prosecutors is dismissed because the Act only applies to the conduct of federal judges. *See* 28 U.S.C. § 351(a), (d)(1); Rule 4.

The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.